The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOHN F. BROKER, DOUGLAS W. GARDNER, ALAN V. NEUBAUER, BRIAN L. NESS, and KIM L. WRIGHT

Appeal 2007-0525
Application 09/919,794[1]
Technology Center 2100

Decided: September 21, 2007

Before LEE E. BARRETT, JOSEPH F. RUGGIERO, and HOWARD B. BLANKENSHIP, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-20. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We reverse.

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[1] Application for patent filed August 2, 2001, entitled "Information Display System for an Appliance Incorporating Electronic Interface Screen."

BACKGROUND

The claims relate to displaying information on an appliance based on selections by a user. A touch screen is divided into a plurality of zones. Upon selecting one of the zones displaying a first set of information, the zone is enlarged to encompass the screen and to display additional details concerning the first set of information.

Claim 1 is illustrative:

> 1. A method of conveying information on a display screen of an appliance comprising:
>
> dividing the screen into a plurality of zones;
>
> displaying a first set of information in one of the plurality of zones; and
>
> causing said one of the plurality of zones to become enlarged so as to substantially, entirely encompass the screen, while automatically presenting a second set of information representing additional details concerning the first set of information on the screen.

THE REFERENCE

Blair	US 6,502,265 B2	Jan. 7, 2003 (filed Dec. 21, 2000)

THE REJECTION

Claims 1-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Blair. Appellants filed an affidavit under 37 C.F.R. § 1.131 to antedate the Blair patent, but the Examiner was not persuaded.

DISCUSSION

The threshold issue is whether Blair is antedated by Appellants' affidavit under 37 C.F.R. § 1.131 (Rule 131). The affidavit was submitted on July 20, 2004, and has been entered.[2]

The Examiner states that sufficiency of the affidavit is a petitionable matter (Answer 2, 6). However, the sufficiency of a Rule 131 affidavit or declaration is clearly within the jurisdiction of the Board because it affects a rejection of the claims. *See In re DeBaun*, 687 F.2d 459, 214 USPQ 933 (CCPA 1982) (reviewing Board decision involving Rule 131 declaration).

37 C.F.R. § 131 provides that an applicant may establish invention of the claimed subject matter before the effective date of the reference and antedate the reference. The tests are stated in § 1.131(b):

> The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, ***or*** conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. [Emphasis added.]

That is, there are three ways in which an applicant can antedate a reference: (1) *actual* reduction to practice of the invention prior to the effective date of the reference; ***or*** (2) conception of the invention prior to the effective date of

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[2] The Evidence Appendix in the Brief lists the affidavit, but does not include a "statement setting forth where in the record that evidence was entered in the record by the examiner" as required by 37 C.F.R. § 41.37(c)(1)(ix). We will overlook this informality.

the reference coupled with due diligence from prior to the reference date to a subsequent *actual* reduction to practice; ***or*** (3) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (*constructive* reduction to practice). Methods (2) and (3) are used when conception occurs prior to the date of the reference, but reduction to practice, actual or constructive, is afterward.

The facts and relevant dates are as follows:

May 2000	Conception of the present invention as evidenced by the disclosure document
September 22, 2000	Actual reduction to practice by commercial production of washing machine incorporating claimed invention
December 21, 2000	Filing date of Blair Application 09/741,067 (which became the Blair '265 patent)
August 2, 2001	Filing date of instant application
January 7, 2003	Blair '265 patent issued

Since there is sworn testimony of an actual reduction to practice before the filing date of the Blair patent, the affidavit is sufficient to antedate Blair under method (1). Diligence is not required because this is not a case where the reduction to practice occurred after the filing date of the reference.

Appellants confuse the issue by stating that "the Applicant never intended to show a reduction to practice prior to the effective date of the '265 [Blair] reference but rather conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the date to a subsequent reduction to practice or to the filing of the application" (Br. 13; Reply Br. 2 is identical except for a comma). Thus, Appellants argue that they are not relying on actual reduction to practice before the Blair filing date but then go on to argue that there was an actual reduction to practice before the effective date of the reference and no diligence needs to be shown (Br. 14). Appellants argue that there was a conception date of May 2000, and the fact that there was only four months before the actual reduction to practice by production "clearly proves diligent working as a four month window from conception to reduction to practice in the form of an actual production version of a washing machine is an incredibly short period of time" (Br. 13). Diligence is not necessary when the actual reduction to practice occurs before the date of the reference. While the arguments are confusing, we nevertheless conclude that the affidavit antedates Blair.

The Examiner's sole reason for objection is that "the submitted affidavit and exhibits does [sic] not clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date" (Answer 6). However, the affidavit states that "[b]oth the present invention and the interactive control system for a laundry appliance as set forth in U.S. Patent No. 6,502,265 are owned by the same

assignee and were diligently worked on in connection with the production (production [sic, reduction?] to practice) of a common washing machine that went into production on September 22, 2000" (Affidavit, page 1). Thus, the production washing machine is the reduction to practice and the Examiner has not explained why this is not sufficient.

Therefore, we conclude that Blair is antedated by Appellants' affidavit under 37 C.F.R. § 1.131. Accordingly, the rejection of claims 1-20 is reversed.

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REVERSED

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